Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

Vol. 18 | NOVEMBER 14, 1984 | No. 46

This issue contains:

U.S. Customs Service

T.D. 84-216 Through 84-226

Erratum (T.D. 84-154)

C.S.D. 84-99 Through 84-107

U.S. Court of International Trade

Slip Op. 84-118

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Administrative Programs, Public Services and Information Materials Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decisions

(T.D. 84-216)

Customhouse Broker's License—Revocation by Operation of Law of Customhouse Broker's License No. 7423

Pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part 111 of the Customs Regulations, as amended (19 CFR 111.52), notice is hereby given that customhouse broker's license No. 7423 of Transpacific Air Cargo Corporation is revoked by operations of law.

WILLIAM VON RAAB,
Commissioner of Customs.

[Published in the Federal Register, November 6, 1984 (49 FR 44351)]

(T.D. 84-217)

RECORDATION OF TRADE NAME: "VILLEROY & BOCH KERAMISCHE WERKE KG"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Recordation.

SUMMARY: On August 3, 1984, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "VILLEROY & BOCH KERAMISCHE WERKE KG" was published in the Federal Register (49 FR 31189). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in opposition to the recordation and received not later than October 2, 1984. No responses were received in opposition to the notice.

Accordingly, as provided in section 133.14, Customs Regulations (19 CFR 133.14), the name "VILLEROY & BOCH KERAMISCHE WERKE KG" is recorded as the trade name used by Villeroy & Boch Keramische Werke KG, a limited liability partnership organized under the laws of Germany located in D-6642 Mettlach, West Germany. The trade name is used in connection with the following

merchandise manufactured in West Germany and France: housewares; tableware and glassware; ceramic titles; and ceramic sanitary installation.

DATE: November 1, 1984.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5765).

DATED: October 26, 1984.

STEVEN PINTER,
Acting Director, Entry Procedures and Penalties Division.

[Published in the Federal Register, November 1, 1984 (49 FR 44050)]

(T.D. 84-218)

Quarterly Rates of Exchange

The table below lists rates of exchange, in United States dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under provisions of section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Quarterly Beginning: October 1, 1984 through December 31, 1984.

Country	Name of currency	U.S. dollars
Australia	Dollar	.83200
Austria	Schilling	.046555
Belgium	Franc	.016116
Brazil	Cruziero	.000429
Canada	Dollar	.759186
China, P.R.	Renminbi Yuan	.383803
Denmark	Krone	.090457
Finland	Markka	.157109
France	Franc	.106553
Germany	Deutsche Mark	.326637
Hong Kong	Dollar	.127992
India	Rupee	.083682
Iran	Rial	N/A
Ireland	Pound	1.0130
Italy	Lira	.000527
Japan	Yen	.004058
Malaysia	Dollar	.421763
Mexico	Peso	.004988
Netherlands	Guilder	.290402
New Zealand	Dollar	.48700
Norway	Krone	.113250
Philippines	Peso	N/A
Portugal	Escudo	.006202

Country	Name of currency	U.S. dollars
Republic of So. Africa	Rand	.59500
Singapore	Dollar	.461361
Spain	Peseta	.005821
Sri-Lanka	Rupee	.038741
Sweden	Krona	.115674
Switzerland	Franc	.396354
Thailand	Baht (Tical)	.043440
United Kingdom	Pound	1.2375
Venezuela	Bolivar	N/A

(LIQ-03-01 S:COM CIE)

Dated: October 1, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-219)

Foreign Currencies—Daily Rates For Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

(September 3, 1984 holiday, use rates for August 31, 1984)

Greece drachma:	
September 4, 1984	$0.008587
September 5, 1984	.008529
September 6, 1984	.008529
September 7, 1984	.008493
Israel shekel: September 4–5, 1984	N/A
South Korea won:	
September 4, 1984	.001232
September 5, 1984	.001230
September 6, 1984	.001229
September 7, 1984	.001229
Taiwan dollar: September 4–7, 1984	.025589

(LIQ-03-01 S:COM CIE)

Dated: September 7, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-220)

Foreign Currencies—Daily Rates For Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
September 10, 1984	$0.008478
September 11, 1984	.008439
September 12, 1984	.008464
September 13, 1984	.008393
September 14, 1984	.008400
Israel shekel: September 10–17, 1984	N/A
South Korea won:	
September 10, 1984	.001227
September 11–12, 1984	.001226
September 13, 1984	.001227
September 14, 1984	.001225
Taiwan dollar:	
September 10, 1984	N/A
September 11, 1984	.025589
September 12, 1984	.025582
September 13, 1984	.025569
September 14, 1984	.025562

(LIQ-03-01 S:COM CIE)

Dated: September 14, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-221)

Foreign Currencies—Daily Rates For Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
September 17, 1984	$0.008319
September 18-20, 1984	.008264
September 21, 1984	.008333
Israel shekel: September 17-21, 1984	N/A
South Korea won:	
September 17-18, 1984	.001225
September 19, 1984	.001223
September 20, 1984	.001224
September 21, 1984	.001223
Taiwan dollar:	
September 17, 1984	.025549
September 18, 1984	.025543
September 19, 1984	.025530
September 20, 1984	.025517
September 21, 1984	.025504

(LIQ-03-01 S:COM CIE)

Dated: September 21, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-222)

Foreign Currencies—Daily Rates For Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for

the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
September 24, 1984	$0.008130
September 25, 1984	.008052
September 26, 1984	.007962
September 27, 1984	.008032
September 28, 1984	.007968
Israel shekel: September 24–27, 1984	N/A
South Korea won:	
September 24, 1984	.001222
September 25, 1984	.001223
September 26, 1984	.001225
September 27, 1984	.001223
September 28, 1984	.001225
Taiwan dollar:	
September 24, 1984	.025478
September 25–26, 1984	.025465
September 27, 1984	.025478
September 28, 1984	N/A

(LIQ-03-01 S:COM CIE)

Dated: September 28, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-233)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c). Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 84-162 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

(September 3, 1984, holiday, use rates for August 31, 1984)

Austria schilling:	
September 5, 1984	$0.048142
September 6, 1984	.048286
September 7, 1984	.047744
Belgium franc: September 7, 1984	.016644
Brazil cruzeiro:	
September 4, 1984	.000475
September 5–7, 1984	.000446
China P.R. yuan:	
September 4, 1984	.409601
September 5, 1984	.404334
September 6, 1984	.401929
September 7, 1984	.401929
Denmark krone: September 7, 1984	.092421
France franc:	
September 5, 1984	.110339
September 6, 1984	.110509
September 7, 1984	.109087
Germany mark:	
September 5, 1984	.338524
September 6, 1984	.339271
September 7, 1984	.334784
Ireland pound: September 7, 1984	1.0370
Italy lira:	
September 4, 1984	.000553
September 5, 1984	.000550
September 6, 1984	.000549
September 7, 1984	.000544
Mexico peso: September 4–5, 1984	N/A
Netherlands guilder:	
September 5, 1984	.299985
September 6, 1984	.300481
September 7, 1984	.296824
New Zealand dollar:	
September 4, 1984	.49500
September 5, 1984	.49250
September 6, 1984	.49290
September 7, 1984	.49080
Norway krone: September 7, 1984	.117994
Portugal escudo: September 7, 1984	.006454

Republic of South Africa rand:	
September 4, 1984	.62130
September 5, 1984	.60750
September 6, 1984	.60850
September 7, 1984	.60270
Spain peseta:	
September 5, 1984	.005974
September 6, 1984	.005968
September 7, 1984	.005922
Switzerland franc: September 7, 1984	.402091
United Kingdom pound:	
September 5, 1984	1.2810
September 7, 1984	1.2730
Venezuela bolivar: September 4–7, 1984	N/A

(LIQ-03-01 S:COM CIE)

Dated: September 7, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-224)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 84-162 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Austria schilling:	
September 10, 1984	$0.047619
September 11, 1984	.047483
September 12, 1984	.047495
September 13, 1984	.046838
September 14, 1984	.046904
Belgium franc:	
September 10, 1984	.016595
September 11, 1984	.016565

September 12, 1984	.016581
September 13, 1984	.016380
September 14, 1984	.016393
Brazil cruzeiro:	
September 10, 1984	.000446
September 11-14, 1984	.000459
China P.R. Yuan:	
September 10, 1984	.396574
September 11, 1984	.394602
September 12, 1984	.396983
September 13, 1984	.394617
September 14, 1984	.392249
Denmark krona:	
September 10, 1984	.092208
September 11-12, 1984	.092017
September 13, 1984	.090827
September 14, 1984	.091013
Finland markka:	
September 11, 1984	.160385
September 13, 1984	.159363
September 14, 1984	.159872
France franc:	
September 10, 1984	.108992
September 11, 1984	.108372
September 12, 1984	.108707
September 13, 1984	.107210
September 14, 1984	.107411
Germany mark:	
September 10, 1984	.334225
September 11, 1984	.332447
September 12, 1984	.333556
September 13, 1984	.328947
September 14, 1984	.329652
India rupee: September 14, 1984	.084602
Ireland pound:	
September 10, 1984	1.0350
September 11, 1984	1.0325
September 12, 1984	1.0335
September 13, 1984	1.0197
September 14, 1984	1.0215
Italy lira:	
September 10, 1984	.000543
September 11-12, 1984	.000542
September 13, 1984	.000535

September 14, 1984	.000536
Mexico peso: September 10–14, 1984	N/A
Netherlands guilder:	
September 10, 1984	.296384
September 11, 1984	.294881
September 12, 1984	.295858
September 13, 1984	.292056
September 14, 1984	.292440
New Zealand dollar:	
September 10, 1984	.49100
September 11, 1984	.49180
September 12, 1984	.49210
September 13, 1984	.49050
September 14, 1984	.49030
Norway krone:	
September 10, 1984	.117675
September 11, 1984	.117633
September 12, 1984	.117440
September 13, 1984	.116448
September 14, 1984	.116618
Portugal escudo:	
September 10, 1984	.006421
September 11, 1984	.006404
September 12, 1984	.006414
September 13, 1984	.006361
September 14, 1984	.006365
Republic of South Africa rand:	
September 10, 1984	.60350
September 11, 1984	.60200
September 12, 1984	.60750
September 13, 1984	.59650
September 14, 1984	.60100
Spain peseta:	
September 10–11, 1984	.005931
September 12, 1984	.005929
September 13, 1984	.005881
September 14, 1984	.005891
Switzerland franc:	
September 10, 1984	.401284
September 11, 1984	.400160
September 12, 1984	.401606
September 13, 1984	.397931
September 14, 1984	.399202

United Kingdom pound:	
September 10, 1984	1.2760
September 11, 1984	1.2750
September 12, 1984	1.2795
September 13, 1984	1.2675
September 14, 1984	1.2660
Venezuela bolivar: September 10–14, 1984	N/A

(LIQ-03-01 S:COM CIE)

Dated: September 14, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84–225)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 84–162 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Austria schilling:	
September 17, 1984	$0.046291
September 18, 1984	.045898
September 19, 1984	.045972
September 20, 1984	.045496
September 21, 1984	.046425
Belgium franc:	
September 17, 1984	.016171
September 18, 1984	.016075
September 19, 1984	.016038
September 20, 1984	.015860
September 21, 1984	.016000
Brazil cruzeiro:	
September 17, 1984	.000459
September 18-20, 1984	.000451
September 11, 1984	.000441

456-411 O - 84 - 2

China P.R. Yuan:	
September 17, 1984	.390305
September 18, 1984	.384349
September 19, 1984	.384349
September 20, 1984	.383010
September 21, 1984	.379780
Denmark Krone:	
September 17, 1984	.089993
September 18, 1984	.089405
September 19, 1984	.089350
September 20, 1984	.088425
September 21, 1984	.090147
Finland markka:	
September 17, 1984	.157853
September 18, 1984	.156789
September 19, 1984	.156740
September 20, 1984	.155352
September 21, 1984	.158730
France franc:	
September 17, 1984	.106067
September 18, 1984	.105230
September 19, 1984	.105164
September 20, 1984	.104167
September 21, 1984	.106326
Germany mark:	
September 17, 1984	.325415
September 18, 1984	.323258
September 19, 1984	.322997
September 20, 1984	.319693
September 21, 1984	.326264
India rupee:	
September 17, 1984	.084602
September 18, 1984	.083333
September 19, 1984	.083472
September 20, 1984	.083612
September 21, 1984	.083612
Ireland pound:	
September 17, 1984	1.0080
September 18, 1984	1.0038
September 19, 1984	1.0025
September 20, 1984	.99150
September 21, 1984	1.0115
Italy lira:	
September 17, 1984	.000529

September 18, 1984	.000525
September 19, 1984	.000524
September 20, 1984	.000518
September 21, 1984	.000529
Mexico peso: September 17–21, 1984	N/A
Netherlands guilder:	
September 17, 1984	.288600
September 18, 1984	.286985
September 19, 1984	.286492
September 20, 1984	.283366
September 21, 1984	.289017
New Zealand dollar:	
September 17, 1984	.48740
September 18, 1984	.48580
September 19, 1984	.48630
September 20, 1984	.48450
September 21, 1984	.48900
Norway krone:	
September 17, 1984	.115694
September 18, 1984	.115115
September 19, 1984	.114863
September 20, 1984	.114090
September 21, 1984	.115168
Portugal escudo:	
September 17, 1984	.006289
September 18, 1984	.006146
September 19, 1984	.006238
September 20, 1984	.006202
September 21, 1984	.006154
Republic of South Africa rand:	
September 17, 1984	.59430
September 18, 1984	.58880
September 19, 1984	.59700
September 20, 1984	.58700
September 21, 1984	.60500
Spain peseta:	
September 17, 1984	005819
September 18, 1984	.005757
September 19, 1984	.005789
September 20, 1984	.005773
September 21, 1984	.005780
Sweden krona:	
September 17, 1984	.115660
September 18, 1984	.115115

September 19, 1984	.114976
September 20, 1984	.114286
September 21, 1984	.115407
Switzerland franc:	
September 17, 1984	.395648
September 18, 1984	.393236
September 19, 1984	.394555
September 20, 1984	.391083
September 21, 1984	.398010
United Kingdom pound:	
September 17, 1984	1.2420
September 18, 1984	1.2320
September 19, 1984	1.2370
September 20, 1984	1.2210
September 21, 1984	1.2450
Venezuela bolivar: September 17-21, 1984	N/A

(LIQ-03-01 S:COM CIE)

Dated: September 21, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-226)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 84-162 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Austria schilling:	
September 24, 1984	$0.047125
September 25, 1984	.046447
September 26, 1984	.046707
September 27, 1984	.046981
September 28, 1984	.046361

Belgium franc:	
September 24, 1984	.016327
September 25, 1984	.016088
September 26, 1984	.016247
September 27, 1984	.016308
September 28, 1984	.016072
Brazil cruzeiro:	
September 24, 1984	.000444
September 25–27, 1984	.000437
September 28, 1984	.000429
China P.R. yuan:	
September 24, 1984	.389120
September 25, 1984	.393856
September 26–28, 1984	.388410
Denmark krone:	
September 24, 1984	.091241
September 25, 1984	.089871
September 26, 1984	.090827
September 27, 1984	.091312
September 28, 1984	.089948
Finland markke:	
September 24, 1984	.159236
September 25, 1984	.157085
September 26, 1984	.158730
September 27, 1984	.158680
September 28, 1984	.157233
France franc:	
September 24, 1984	.107527
September 25, 1984	.105932
September 26, 1984	.107066
September 27, 1984	.107296
September 28, 1984	.106157
Germany mark:	
September 24, 1984	.330360
September 25, 1984	.325256
September 26, 1984	.328494
September 27, 1984	.329489
September 28, 1984	.325521
India rupee:	
September 24, 1984	.084459
September 25, 1984	.084034
September 26, 1984	.083612
September 27, 1984	.083752
September 28, 1984	.083893

Ireland pound:	
September 24, 1984	1.0280
September 25, 1984	1.0087
September 26, 1984	1.0200
September 27, 1984	1.0250
September 28, 1984	1.0075
Italy lira:	
September 24, 1984	.000533
September 25, 1984	.000524
September 26, 1984	.000529
September 27, 1984	.000532
September 28, 1984	.000524
Mexico peso: September 24–28, 1984	N/A
Netherlands guilder:	
September 24, 1984	.292398
September 25, 1984	.288392
September 26, 1984	.291333
September 27, 1984	.292483
September 28, 1984	.288850
New Zealand guilder:	
September 24, 1984	.48980
September 25–26, 1984	.48730
September 27, 1984	.48970
September 28, 1984	.48700
Norway krone:	
September 24, 1984	.114286
September 25, 1984	.113020
September 26, 1984	.113830
September 27, 1984	.114273
September 28, 1984	.112867
Portugal escudo:	
September 24, 1984	.006250
September 25, 1984	.006173
September 26, 1984	.006154
September 27–28, 1984	.006211
Republic of South Africa rand:	
September 24, 1984	.60150
September 25, 1984	.59600
September 26, 1984	.59500
September 27, 1984	.60150
September 28, 1984	.59850
Spain peseta:	
September 24, 1984	.005928
September 25, 1984	.005824

September 26, 1984	.005794
September 27, 1984	.005901
September 28, 1984	.005841
Sweden krona:	
September 25, 1984	.115168
September 28, 1984	.115115
Switzerland franc:	
September 24, 1984	.401284
September 25, 1984	.396432
September 26, 1984	.398724
September 27, 1984	.399202
September 28, 1984	.394789
United Kingdom pound:	
September 24, 1984	1.2455
September 25, 1984	1.2315
September 26, 1984	1.2410
September 27, 1984	1.2460
September 28, 1984	1.2340
Venezuela bolivar: September 24–28, 1984	N/A

(LIQ-03-01 S:COM CIE)

Dated: September 28, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

ERRATUM

In CUSTOMS BULLETIN, Volume 18, No. 32, dated August 8, 1984, page 10, T.D. 84–154–X, the description of the articles and merchandise was incorrect. The correct description is listed below.

Articles: 2-D-1-(6′methoxy-2′-naphthyl)-propionic acid salt or 1-deoxy-1-(octylamino)-D-glucitol (*NOG–1*).

Merchandise: N-n/Octylglucamine (*NOG*) 1-Deoxy-1 (n-octylamino) D-glucitol.

U.S. Customs Service

Customs Service Decisions

DEPARTMENT OF THE TREASURY
OFFICE OF THE COMMISSIONER OF CUSTOMS
Washington, D.C., September 29, 1984.

The following are decisions of the United States Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

MARVIN M. AMERNICK
(For B. James Fritz, Director,
Regulations Control and Disclosure Law Division).

(C.S.D. 84-99)

This ruling prescribes the methods which must be taken in setting amounts for single entry and term bonds covering merchandise regulated by another government agency (19 CFR 113.14(g)).

Date: November 21, 1980
File: BON-2-RRUCDB
211989 L

Issue: Must all merchandise regulated by various agencies whose laws with respect to entry of merchandise into the Customs territory of the United States are administered by the Custom Service have an entry bond in an amount equal to the value of the articles, as set forth in the entry, plus the estimated duty and the estimated amount of any other taxes imposed upon or by reason of importation?

Facts: Los Angeles District Circular BON-1-L:C:D-I, dated June 25, 1980, relates to bonding requirements for merchandise regulated by the U.S. Food and Drug Administration, U.S. Department of Agriculture, U.S. Department of Transportation, and the U.S. Environmental Protection Agency. The Circular provides that all merchandise regulated by one of these agencies, if entered for consumption, must have an entry bond posted on Customs Form (CF) 7551, 7553, or 7595. The bond must be in an amount equal to the value of the articles, as set forth in the entry, plus the estimated duty and the estimated amount of any other taxes imposed upon or by reason of importation, as determined at the time of entry.

456-411 O - 84 - 3

With respect to warehouse entries, the District Circular provides that only CF 7595 is acceptable if merchandise will be withdrawn from warehouse pending approval by the regulating agency. Merchandise may be entered on a CF 7555 only if the merchandise will not be withdrawn until after release or refusal issued by the regulating agency. Merchandise refused entry may be withdrawn from warehouse only for immediate exportation or destruction under Customs supervision.

The circular became effective on June 25, 1980.

Law and Analysis: Section 1623(b), Title 19, United States Code, provides among other things that:

> [W]henever a bond is required or authorized by a law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce, the Secretary of the Treasury may—
>
> (1) Except as otherwise specifically provided by law, prescribe the conditions and form of such bond, and fix the amount of penalty thereof, whether for the payment of liquidated damages or of a penal sum. . . .

Section 113.14, Customs Regulations (19 CFR 113.14), sets out the bonds approved by the district director and includes CF 7551, 7553, 7555, and 7595. Section 113.15, Customs Regulations (19 CFR 113.15), provides that the district director at the port where the bond is filed may approve any bonds described in section 113.14 if he is satisfied that the amount of the bond is sufficient and the bond is in proper form.

Headquarters Circular BON-1-O:A:E, X BON-2-O:A:E, dated April 26, 1973, addressed the subject of bond sufficiency when CF 7553 or 7595 is used as security. It provides that where a threat to the revenue may exist, Customs officers shall review the sufficiency of the bond filed, exercising care to protect the revenue while avoiding putting the importer or broker in an impossible position. When a determination is made that the revenue is in jeopardy certain alternatives are available, including:

> a. Request can be made for a specific deposit of supplemental duty adequate to cover the threat to the revenue;
>
> b. Importer or broker can be requested to furnish a new consumption entry term bond in an increased amount;
>
> c. Request can be made for a single entry bond.

When a general term bond is involved, and the circumstances warrant one of the above actions, the Circular directs that the district director notify the Customs Information Exchange of the action taken.

Headquarters Circular BON-1-R:CD:D, X BON-2, dated August 27, 1974, addressed the subject of the general term bond, CF 7595, particularly with respect to the amount of charges which may be placed against that bond. The circular points out, among other things, that Customs Headquarters has stated in response to in-

quiries in individual cases that it does not require that the amount of the general term bond exceed the value plus the duty and tax in cases of consumption entries or exceed double the amount of duty in cases of warehouse entries. In each such case, however, Customs Headquarters has included the caveat that if the district director believes the bond to be insufficient in connection with a given transaction, he shall require additional security. The Circular further points out that requiring additional security in every case in which the value plus duty and tax on an entry exceeds the amount of the General Term Bond could very often result in the acquisition of unnecessary additional security, and provides that a judgement shall be made in each case whether there are special circumstances present which require the demand for additional security. One of the special circumstances listed is the probability of requiring redelivery of the merchandise involved.

Neither the Circular of April 26, 1973, nor the Circular of August 27, 1984, refers specifically to bonding requirements for merchandise regulated by other agencies whose laws with respect to entry of merchandise into the United States are administered by the Customs Service.

The laws and regulations of the other agencies typically provide that the Secretary of the Treasury may authorize delivery of merchandise to the owner or consignee upon the execution by him "of a good and sufficient bond" (21 U.S.C. 381(b)); or that no product required to be inspected shall be delivered to the consignee prior to inspection unless the consignee shall furnish a bond, "in form prescribed by the Secretary of the Treasury" (9 CFR 327.7(f)); or may release merchandise from Customs custody for delivery to the owner or consignee, pending examination, "upon the execution on the appropriate form of either a Customs single entry bond or a Customs term bond in such amount as is prescribed for such bond in Customs Regulations in force on date of entry" (7 CFR 201.218); or "upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate" (15 U.S.C. 1397(b)(3)).

There is nothing in 19 U.S.C. 1623 specifying that a Customs bond must be in a certain amount or describing its format. To afford flexibility these considerations have been left to the Customs Service. The Customs Service has generally exercised its authority through regulations such as section 113.14(g)(2), Customs Regulations (19 CFR 113.14(g)(2)), which provides that a term bond, CF 7553, shall be taken in the amount of $10,000, or such larger amount as the district director may deem necessary.

In considering the amount to be taken on a bond, the essential job for the Customs Service is to determine to what length Congress intended it to go in obtaining protection. For redelivery purposes absolute protection is not possible. There will always be instances where merchandise has been consumed and cannot be redelivered, despite the fact that it is found to be unsafe or unhealthy.

A high bond amount will make these instances rare but it can never eliminate them entirely. The situation is different with respect to duties; the bond can be taken in an amount which will insure payment of any conceivable duty.

While absolute protection is not possible, it can be approached as a limit. We do not believe that this approach would serve well the commerce of the country and we do not believe we should assume that Congress wanted the revenue protected at the price of hamstringing the country's commerce. We believe we should conclude that Congress intended the law to be applied reasonably and practically. What was intended was security which would enable Customs normally to collect duties and have merchandise redelivered when necessary but also would allow commerce to prosper. It is recognized that occasional losses may occur but these will be exceeded by benefits to the country's commerce which would not result from an over-cautious attitude.

Section 113.14(g)(1), Customs Regulations (19 CFR 113.14(g)(1)), requires that a single entry bond, CF 7551, be in an amount equal to the value of the articles plus estimated duty and taxes, with certain exceptions. (Currently Customs is considering proposing a change to the Regulations to eliminate value as a consideration in taking the single entry bond.) The Customs Regulations require that the term bond, CF 7553, and general term bond, CF 7595, be in the amount of $10,000 or $100,000, respectively, or such larger amount as may be fixed by the district director. Unlike the single entry bond, there is no requirement that a term or general term bond equal or exceed the value plus duty and taxes on any single shipment. Section 25.3(b)(1), Customs Manual, sets the formula for fixing the amount of the general term bond. This section provides that the general term bond shall be in the multiple of $100,000 nearest to 10 per centum of the duties and taxes paid and accrued but not paid during the calendar year preceding the date of the application. It may, of course, be taken in a greater amount. We are not aware of any regulation pertaining to the method for fixing the amount of the term bond, CF 7553. However, see telegram BON–1–RRUCDA (211688), dated May 16, 1980, to all Regional Commissioners and all Area/District Directors. This telegram indicates that "[A] bond on CF 7553 may be approved in the amount of $10,000 or greater sum; that is, in an amount sufficient in your judgement to accomplish the purpose for which the bond is given". The telegram also indicates that the Customs Regulations are being amended and that in the interim, the notice by telegram is to be used in setting bond amounts for bonds on CF 7553.

The district director has authority to determine if additional security in needed. However this authority must be exercised on a case-by-case basis and not mandated as an unvarying and inflexible requirement in all cases. In this regard Los Angeles Circular RON–1–L:CD:D–I does not accord completely with the regulations.

With respect to the single entry bond, CF 7551, the District Circular is in accord with the Customs Regulations except for merchandise unconditionally free of duty. Section 113.14(g)(1)(iii), Customs Regulations (19 CFR 113.14(g)(1)(iii)) provides that the bond for merchandise unconditionally free of duty may be in such lesser amount as, in the opinion of the district director, will be sufficient to accomplish the purpose for which the bond is given.

With respect to term entry bonds, CF 7553, and general term bonds, CF 7595, neither the Customs Regulations nor any issuance by Headquarters requires these bonds to equal or exceed the value plus the duty and tax in the case of consumption entries. The judgement as to whether additional security is necessary in a given transaction has been left to the district director, but this judgement must be made on a case-by-case basis.

We are not unmindful of the fact that, release of merchandise under bond that may subsequently be refused admission by the regulating agency may prove injurious to the general health and welfare of the country. It is equally evident, however, that the regulating agencies, in the interests of furthering commerce, have empowered the Customs Service to release regulated merchandise prior to a final determination of the admissibility of the merchandise. This release is conditioned upon the taking of a Customs bond in an amount sufficient to insure redelivery, if necessary.

We have no information on the proportion of entries of regulated merchandise, either by quantity or value, that are refused admission after release under bond and are not redelivered into Customs custody. We suspect, however, that it may be substantially higher for some classes of regulated merchandise than for others. To require maximum security in all cases without justification other than the fact that the merchandise is regulated would, in our view, place an unreasonable burden on commerce.

Headquarters Circular BON-1-O:A:E of April 26, 1973, and BON-1-R:CD:D of August 27, 1974, enunciate Customs policy with respect to the sufficiency of term and general term bonds. This policy is basically that these bonds are designed with the normal flow of entries and liquidations in mind. In the normal situation, the term or general term bond is usually in an amount adequate to enforce the redelivery provision even where the value plus duty and tax on an entry exceeds the face amount of the bond. In situations where there are extraordinary circumstances, as there may be with regulated merchandise, a judgement is to be made in each case as to whether the circumstances require a demand for additional security. In considering whether additional security is necessary for regulated merchandise, these circumstances may include, in addition to those noted in Headquarters Circulars BON-1-O:A:E and BON-1-R:CD:D, noted above, such factors as the requirements of the regulating agency, the type and quantity of the regulated merchandise, the amount of duty and tax in relation to the value

of the merchandise, and previous experience with the importer, particularly in connection with compliance with demands for redelivery.

With respect to warehouse entries, section 113.14(h), Customs Regulations (19 CFR 113.14(h)), provides that a warehouse entry bond, CF 7555, shall be in an amount equal to the aggregate sum of double the estimated amount of ordinary duty plus tax. When the bond is to cover merchandise granted a conditional right of entry at a reduced rate of duty, it shall be fixed on the basis of the maximum rate of duty prescribed by law.

The Los Angeles District Circular states that warehouse entries of regulated merchandise will be accepted on CF 7555 only when the merchandise will not be withdrawn before release or refusal by the regulatory agency. Merchandise refused entry in these circumstances may be withdrawn only for immediate exportation or destruction under Customs supervision. If the merchandise will be withdrawn from warehouse before examination and release or refusal by the regulating agency, a warehouse entry will be allowed only if supported by an adequate general term bond, CF 7595.

This provision apparently contemplates a claim for liquidated damages under section 141.113(g), Customs Regulations (19 CFR 141.113(g)), in an amount equal to the value of the merchandise plus duty and taxes in the event regulated merchandise is entered for warehouse and withdrawn prior to examination and refusal of admission by the regulating agency. Since a warehouse entry bond is not taken in an amount that includes the value of the merchandise, the general term bond, which embraces the provisions of the warehouse entry bond, is an appropriate vehicle for obtaining security, where necessary, equal to value plus duty and tax.

In view of the requirements of sections 12.3, 12.9, 12.73, and 12.80, Customs Regulations (19 CFR 12.3, 12.8, 12.73, and 12.80), we perceive no objection to this procedure as it appears to be a reasonable exercise of the District Director's discretion. However, as with the term and general term bond, we believe that this discretion should be exercised on the basis of a judgement that takes into consideration the circumstances in each individual case.

Holding: Single entry bonds, whether for merchandise regulated by another agency or not, are by regulation required to be in an amount equal to the value of the articles, as set forth in the entry, plus the estimated duty (including any taxes required by law to be treated as duties) and the estimated amount of any other taxes imposed upon or by reason of importation, as determined at the time of entry, with certain exceptions set forth in section 113.14(g), Customs Regulations (19 CFR 113.14(g)).

Term and general term bonds, whether for merchandise regulated by another agency or not, need not be in an amount equal to duty plus tax in all cases but need only be in an amount sufficient in the judgment of the district director to accomplish the purpose

for which the bond is given. A judgement shall be made in each case based upon the circumstances present as to whether additional security is necessary. Los Angeles District Circular BON-1-L:C:D:I of June 25, 1980, should be modified to reflect this holding.

Similarly, where entries for warehouse are submitted for merchandise regulated by another agency, a judgement shall be made in each case based upon the circumstances present as to whether the security provided by the warehouse entry bond is deemed sufficient. If, in the discretion of the district director, the warehouse entry bond does not provide sufficient security for the proposed transaction, security in the form of a general term bond that is deemed adequate under the circumstances may be required.

(C.S.D. 84-100)

This ruling holds that the protestant in a claim for rejected merchandise drawback which was filed under the incorrect provision of the drawback law, when both rejected and same condition drawback could apply, should be instructed or allowed to change the claim to same condition drawback and file the appropriate affidavit. (19 U.S.C. 1313(c)(j))

Date: February 28, 1984
Files: DRA-1-09-CO:R:CD:D
216542 B

To: Regional Commissioner of Customs, North Central Region, Chicago, Illinois. Attn: Director, Classification and Value Division

From: Director, Carriers, Drawback and Bonds Division Service Headquarters

Subject: Application for Further Review—Same Condition Drawback/Rejected Merchandise Drawback—Protest No. 4501-3-00010 of March 1, 1983

Protestant is the importer of cutlery which was sold/distributed in this country to persons who found the cutlery to be defective, in that the blades broke because of improper tempering. That cutlery and other unbroken cutlery obtained from protestant's customers were destroyed under Customs supervision by having the blades broken from the handles of the intact knives. This fact is attested to by a Customs officer's signature on a Customs Form 3499 dated August 18, 1982, which states the purpose of the filing of the form is to ask permission to "Destroy with provision for drawback."

Protestant submitted a Customs Form 7539, erroneously applying for rejected merchandise drawback under section 1313(c) of the drawback law. CF 7539 is also the proper form for application for same condition drawback, section 1313(j) of the same law. Drawback was denied for two reasons: (1) the merchandise was not exported as required for drawback under section 1313(c), and (2) the merchandise was "used," thereby rendering same condition drawback inapplicable. Timely protest was filed.

Law and Analysis: C.S.D. 84-19 of April 28, 1983 (Headquarters Ruling 215708) directed in effect that if a claimant can qualify for drawback under manufacturing drawback or same condition drawback, and the claimant has requested drawback erroneously under the incorrect provision, the drawback office involved was to nevertheless process the claims as submitted. Although this ruling has not been published, a copy was sent to each region.

The same reasoning applies to cases such as that before us if both rejected and same condition drawback could apply. Obviously in this case the former does not apply. However, in this case the protestant should have been instructed or allowed to change the claim to same condition drawback and to file the appropriate affidavit, the question of "use" notwithstanding.

As for the cutlery allegedly used prior to destruction, we have stated the following in C.S.D. 84-65 of January 6, 1984 (Headquarters Ruling 216556):

> If a piece of equipment or a tool, etc., is put to its intended use and if found not to perform satisfactorily for any reason, that equipment or tool has nonetheless been used. If the failure to perform is due to failure to meet one or more specifications, the proper avenue to obtain drawback is under the rejected merchandise provision, 19 U.S.C. 1313(c).
>
> On the other hand, if the failure to meet specification(s) renders the equipment or tool incapable of use, then same condition drawback will apply assuming all requirements of the law and applicable regulations are met. In short, attempted use for intended purpose does not normally render the same condition law inapplicable. Use for such purposes, however unsatisfactory the results, does render that law inapplicable.

Any use which caused the blades to break or disengage from the handles renders same condition inapplicable. On the other hand, if consumers tried to use the cutlery and it would not perform, same condition drawback applies. If it was used more than incidentally with unsatisfactory results, that law does not apply. A slight use of these "professional cutlery knives" to discover that they would not cut or slice satisfactorily may not be sufficient to render section 1313(j) inapplicable. For us to make that determination on the facts herein presented would be factual hair-splitting, at best, or impossible, at worst.

For example, protestant retrieved the knives from "customers." Were these customers ultimate users, or retail-wholesale distributors? If the latter, most of the knives could not have been used pursuant to C.S.D. 81-222.

Holding: The protest is returned to you for action consistent with the foregoing. You are directed to gather facts necessary for you to determine the exent of the "use" of the knives and/or the number of knives "used" prior to destruction. After you make that determi-

nation, render a decision. If it is unsatisfactory to the protestant, the matter should be forwarded to us for additional further review.

(C.S.D. 84-101)

This ruling holds that merchandise that is banned from sale in the United States may be imported and entered into a class 6 bonded manufacturing warehouse and there be manufactured with other articles for the purpose of exportation (19 U.S.C. 1311).

Dated: March 2, 1984
File: WAR-4-02-CO:R:CD:D
216651 L

This is in reply to your letter of January 20, 1984, in which you ask if an article, banned from sale in the United States, may be imported and entered into a class 6 bonded manufacturing warehouse and there be manufactured with other components. You also ask if the manufacture may be done in a class 6 warehouse for the importer by an independent contractor.

The factual situation is described as follows:

Formulated bulk toothpaste containing cyclamates, and the components of a specially-designed toothpaste tube will be imported. It is stated that articles for human consumption which contain cyclamates are banned from sale in the United States. However, it is further stated that the applicable law would permit an otherwise nonconforming drug, intended for export, which is produced in accordance with the foreign purchaser's specifications and is not in conflict with the laws of the foreign country, to be exported to that country.

With respect to the manufacturing procedure, completely formulated toothpaste is imported in drums. When needed for production, the drums are emptied into a storage tank and/or filling hopper. With the screw top of the specially-designed tube (samples of which have been submitted) in place, the imported tube component is introduced at the appropriate station on the filling line in an upside down position and filled. The line moves to a new position where another imported component is put into place. The manufacture is now completed and the line moves to points where the filled tubes are placed in individual boxes, and the boxes into shipping cartons for export.

The production work may be done by the importer or may be contracted out to an independent contractor at another location.

You also ask the nature and amount of penalties and/or liquidated damages that would be incurred if toothpaste manufactured for export in a class 6 warehouse was diverted to the United States domestic market, and to confirm your understanding that repeated or deliberate withdrawals for consumption instead of export could cause the suspension or revocation of the bonded status of the warehouse.

Class 6 Customs bonded warehouses are established under the authority of 19 U.S.C. 1311 and are for the manufacture in bond, solely for exportation, of articles made in whole or in part of imported materials or of materials subject to internal revenue taxes.

The definition of the term "manufacture" has been discussed recently in C.S.D. 82-24. On the basis of that discussion and the cases cited therein, it is our opinion that the process described constitutes a manufacture for the purposes of 19 U.S.C. 1311.

Except for the three types of merchandise mentioned in 19 CFR 144.1(a), merchandise whose entry is not prohibited by any Government agency may be entered for warehousing. Assuming that the cyclamate-containing toothpaste is not refused admission into the United States pursuant to 19 CFR 12.1(a) and applicable regulations, the described manufacture would be permissible in a class 6 warehouse.

Under the Proprietor's Manufacturing Warehouse Bond, Class 6 (see T.D. 82-204, Appendix B), a diversion into the United States market of articles manufactured in the warehouse would result, at the least, in violations of conditions 1(a), 5(a), and 6. Each default under condition 1(a) subjects the principal to the payment of liquidated damages of $1000; each default under condition 5(a) subjects the principal to the payment of liquidated damages equal to five times the duty and tax due on the merchandise involved; and each default under condition 6 subjects the principal to the payment of liquidated damages equal to the duty and tax due on any merchandise involved in the default. Depending upon the specific circumstances, there may be other violations of the bond as well as, for example, with the record-keeping agreements in condition 4 of the bond. In addition, penalties may be incurred under 19 U.S.C. 1592 if there is evidence of fraud or negligence.

Pursuant to 19 CFR 19.3(e) repeated or deliberate withdrawals for consumption instead of export would be grounds for revocation or suspension of the right of the proprietor to continue the bonded status of the warehouse.

The manufacture could be done by an independent contractor. We assume the independent contractor would be the class 6 warehouse proprietor. If the merchandise to be manufactured is not imported by the proprietor, 19 CFR 19.14(b) requires a Bond on Entry for Manufacturing Warehouse, CF 7571, in addition to the Proprietor Manufacturing Warehouse Bond. Note also 19 CFR 19.15(h) providing that merchandise may not be withdrawn from a class 6 warehouse by other than the Manufacturer unless the withdrawal is endorsed by the manufacturer or the right of withdrawal has been transferred.

By-products and waste incident to the processes of manufacture may, under 19 U.S.C. 1311, be withdrawn for domestic consumption on payment of duty equal to the duty which would be assessed and collected if imported from a foreign country. Any such wastes con-

taining cyclamates would, we assume, be precluded from domestic consumption and would have to be exported or destroyed.

Except for the three types of merchandise mentioned in 19 CFR 144.1(a), merchandise whose entry is not prohibited by any Government agency, even though its sale in the United States is banned be a Government agency, may be imported and entered into a class 6 bonded manufacturing warehouse and there be manufactured with other articles solely for the purpose of exportation. The manufacture may be done in a class 6 warehouse by the importer or by an independent contractor in accordance with the regulations in 19 CFR Part 19 and Part 144.

(C.S.D. 84-102)

This ruling holds that gold bars exported and melted down to produce intermediate gold wire for making chains or bracelets are entitled to GSP treatment when imported as jewelry. Gold wire exported and cut to length and shaped into designer stampings for making chains and bracelets is not entitled to item 807.00, TSUS treatment.

Date: April 17, 1984
File: CLA-2 CO:R:CV:V
071788 EM

In your letters, both dated December 1, 1983, on behalf of the importer (Company Name), you asked for information about the applicability of the Generalized System of Preferences (GSP) and item 807.00, Tariff Schedules of the United States (TSUS), to gold bars that will be melted down and ultimately used in the production of chains or bracelets which are returned to the United States.

With respect to the GSP question, it is explained that gold bars will be exported to Brazil for melting down and mixing with necessary alloys in order to reduce the gold from 24 karat fine gold to 18 karat gold. The resultant 18K. gold will be rolled into wires of different gauge and size and then shaped into round circles or ovals, soldered together, and stamped in a special plate into a flat link figure-8 or similar shape in accordance with customer specifications. Clasps will be attached to form chains or bracelets which will then be cleaned, polished and buffed, and exported directly to the United States.

Under the Generalized Systems of Preferences, eligible articles imported directly from a beneficiary developing country (BDC) are entitled to duty-free treatment provided that the sum of (1) the cost or value of the materials produced in the BDC plus (2) the direct costs of processing performed in the BDC, is not less than 35 percent of the appraised value of such articles at the time of their entry into the United States. The term "materials produced in the BDC" refers to constituents materials which are either wholly the growth, product, or manufacture of the BDC, or imported materials

which are substantially transformed in the BDC into new and different articles of commerce. "Substantially transformed constituent materials" must undergo a further substantial transformation into a finished product which becomes a GSP eligible article before the cost or value of the materials can be included in the 35 percent value-added requirements.

Further, in terms of T.D. 76–100, which provides the governing interpretation for determining which materials may be included under the 35 percent criterion, the question presented here is whether there exists an intermediate product in the manufacture of the chains or bracelets, which is a substantially transformed constituent material. On the basis of the information submitted, the intermediate product is the 18K. gold wire that is produced from the exported 24K. gold bars. In this view, we agree that cost or value of the intermediate gold wire produced in Brazil may be included as part of the GSP 35 percent requirement of the subsequently produced chains or bracelets exported directly to the United States. The 18K. gold wire which is further processed in Brazil into circles, ovals, and other specially designed links forming the bracelets, is a substantially transformed constituent material for GSP purposes.

On the other hand, with respect to the assembly provisions of item 807.00, TSUS, instead of melting the gold bars in Brazil to produce gold wire, as stated above, it is proposed in an alternate letter to melt the gold bars in the United States and mix in the necessary alloys to reduce the gold from 24K. fine gold to 18K. gold, and roll the resultant gold into wires of different gauge and dimensions. It is then proposed to export the gold wire to Brazil for cutting and shaping into circles, ovals, and flat links of a figure-8 design, all soldered together to produce chains and bracelets, affixing clasps, cleaning, polishing and buffing, and returning the finished products to the United States.

Operations such as cutting the wire, combined with forming and shaping into the designed circles and ovals, and stamping into flat links of special design, are regarded as fabrications performed abroad on the exported wire, that go beyond the mere assembly of fabricated components permitted under item 807.00, TSUS.

(C.S.D. 84–103)

This ruling holds that start-up costs in excess of those amounts normally anticipated (excess costs) may be accounted for under transaction value through the use of an excess costs account which is periodically updated. The excess costs may then be amortized over the current and future production of goods and reflected in their transfer price in accordance with generally accepted accounting principles.

Date: May 1, 1984
File: CLA-2 CO:R:CV:VS
543153 BNS

This is in response to your letter dated February 4, 1983, and subsequent correspondence regarding the dutiability and amortization of certain start-up costs. You indicate that your client (Company), imports body support garments assembled in Mexico from its subsidiary in that country. You indicate that from the inception of these importations the merchandise herein involved has been appraised under transaction value.

During the initial 15-month start-up period for the importations, your client used its projected standard costs as the basis for formulating its transfer prices from which the transaction value was obtained.

Your client's initial cost projections included an element for start-up costs. Nevertheless you indicate that due to their nature it is difficult or impossible to accurately predict in advance of an actual production period the nature and amount of start-up costs involved in a new operation or enterprise. In your client's case you state that the actual cost of garments produced by the Mexican subsidiary during the start-up period exceeded the projected standard costs which had been used to set transfer prices. In order to recover the difference between its actual and standard costs [hereinafter referred to as *excess costs*] the subsidiary proposed to amortize the excess costs over 4 years, commencing with the end of the start-up period. Your client is of the opinion that the proposed amortization was in accordance with generally accepted accounting principles.

Although the proposed amortization was conceptually designed to treat the excess costs as part of the transaction value of merchandise shipping during the 4 years subsequent to the end of the start-up period, as a matter of merchanics transfer prices were not later increased to reflect start-up cost amortization. Rather, the payment of "deferred duties" on the excess costs was to be accomplished through 16 quarterly tenders during the 4 years following the start-up period.

You request that Customs sanction the use of deferred duty payments in similar future cases, or that alternatively Customs authorize the use of some other method for the payment of duties due on excess costs. You analogize the legitimacy of your proposal to the practice which prevails with regard to the apportionment of assists.

Initially, we note that assuming transaction value is otherwise applicable, a transfer price between related parties for particular merchandise (plus such additions and exclusions specifically provided by statute) normally represents the actual price paid or payable (See TAA Nos. 2 and 25). Under the facts presented it appears that the excess costs incurred by your client could not normally be con-

sidered part of the price actually paid or payable for the merchandise shipped during the start-up period, inasmuch as they are not included in the transfer price nor identified in the Customs entries. Furthermore, insofar as your proposal would treat the excess costs as if they had been part of the transaction value of merchandise shipped during the start-up period, amortization and deferred payment of duties on these excess costs is not analogous to Customs practice relating to the apportionment of assists. In this regard, the valuation law currently in effect specifically mandates that assists be included in the transaction value of merchandise, and that they be apportioned as appropriate (19 USC 1401a(b)(1)(C)). Likewise, the inclusion of assists in transaction value and their apportionment are subjects which are dealt with in detail in both the Statement of Administrative Action adopted by Congress in conjunction with the Trade Agreements Act of 1979, and the Customs Regulations (See *e.g.* 19 CFR 152.103(e)). Contrary to the situation which prevails with regard to assists, there is no provision mandating the inclusion of start-up costs in the transaction value of merchandise. Consequently, neither the value law, the Statement of Administrative Action, nor the Customs Regulations mention the apportionment or amortization of such costs when they are included in the transfer price or transaction value of merchandise.

Finally, insofar as it is intended that the amortization of excess costs and installment payments of "deferred duties" are intended to relate to merchandise entered during a start-up period, we know of no authority for authorizing such deferrals, even though such a practice might be in accord with generally accepted accounting principles. In this regard, section 141.1(a) of the Customs Regulations (19 CFR 141.1(a)) indicates that liability for the payment of duties accrues upon imported merchandise on arrival of the importing vessel within a Customs port with the intent then and there to unlade. Additionally and more importantly, section 24.3(e) of the Customs Regulations (19 CFR 24.3(e)) indicates that a bill for duties is due and payable upon the receipt thereof.

The above discussion indicates that duties owed on excess costs relating to entries made during a start-up period may not be *deferred* and paid in *installments* through the use of the amortization process. However, as an alternative approach, you have indicated your client's willingness to establish an initial account on its books for excess costs, under which the amount of these expenses would be ascertained on the basis of generally accepted accounting principles. You indicate that the account would be updated periodically (e.g., every 90 days) to accurately reflect excess costs being incurred.

The excess costs, as established in the excess cost account, would, from the start of production, be amortized over current and future production and reflected in the selling price (transfer price) in accordance with generally accepted accounting principles. The selling

price would be periodically adjusted (increased or decreased) prospectively as experience dictated.

We believe the above-described alternative approach meets the requirements of transaction value, and accounts for start-up costs in an acceptable manner.

(C.S.D. 84-104)

This ruling holds that interest expense which has been capitalized is not a direct cost of processing under the Generalized System of Preferences (19 CFR 10.178).

Date: May 7, 1984
Title: CLA-2 CO:R:CV:V
543159 BNS

To: District Director of Customs El Paso, Texas 79985
From: Director, Classification and Value Division
Subject: Status of Interest Expense Under the Generalized System of Preferences; I.A. 57/83

Your memorandum forwarded correspondence from (name) on behalf of the (company name) (Importer) seeking internal advice on whether certain interest expenses are direct costs of processing under the Generalized System of Preferences (GSP) and 19 CFR 10.178.

The importer indicates that the merchandise which he imports is valued under computed value. One element included within the computed value of the above merchandise is interest expense incurred by the importer's foreign assembler/supplier in connection with a loan used to finance the acquisition of land and a building, and also to provide working capital. Approximately 30 percent of the loan was used to acquire land, 46 percent for the building, and 24 percent for working capital.

The assembler/supplier proposes to capitalize the interest expense for the portion of the loan used to acquire the building. The above action would increase the amount of building depreciation proportionately. Since 95 percent of the building is claimed as used for production of the imported merchandise, it is argued that the direct costs of processing could be increased in order to help qualify the merchandise for treatment under GSP.

Although you indicate, and our research confirms that the capitalization of the loan in the above fashion is a "controversial" accounting practice, in all probability it could be justified. Nevertheless, even assuming that there were no doubts regarding the propriety of the proposed capitalization, the essential question in this case remains whether the expense incurred is a direct cost of processing.

Initally, we are of the opinion that an expense does not become a "direct cost of processing" merely because it is an element which is dutiable under computed value. In this regard we note that there

are many different types of expenses included within a computed value determination, including general expenses and profits, which clearly are not direct costs of processing. Accordingly, we disagree with the importer's submission to the extent that it implies that the interest expense is a direct cost of processsing because it is an element of computed value.

Second, under computed value the interest on the loan is considered to be a general expense by the Customs Service. We are of the opinion that the essential character of the expense remains unchanged even if, under generally accepted accounting principles, it is permissible to later capitalize it. In this regard, we would also note that under generally accepted accounting principles it would also be permissible in the instant case not to capitalize the loan. Accordingly, because general expenses are not considered to be direct costs of processing under 19 CFR 10.178, the interest expense here in question may not be included in computing the 35 percent requirement for GSP eligibility.

Kindly furnish a copy of this ruling to the inquirer.

(C.S.D. 84-105)

This ruling holds that the assembly operation of thermal relay circuit breakers, involved in this case, is a sufficiently complex operation so as to result in a product of a beneficiary country for purposes of the Caribbean Basin Initiative; and therefore, the breakers would be entitled to duty-free treatment provided compliance with the documentary requirements set forth in the CBI implementing regulations are met.

Date: May 14, 1984
File: CLA-2 CO:R:CV:V
071798 FF

This is in reply to your letter dated February 7, 1984, concerning the applicability of the duty-free provisions of the Caribbean Basin initiative (CBI) to thermal relay circuit breakers produced in Haiti. In addition to a detailed submission covering the process of manufacture of the products in question, your letter enclosed samples of both the finished product and the materials used in their manufacture in Haiti.

You state that the thermal relay circuit breakers in question are used to provide controls for interior lighting on certain automobiles and are produced in Haiti entirely from materials or components sourced in the United States. These materials or components consist of the following: (1) a plastic base, (2) two #27 metal terminals, (3) one #34 metal heater terminal, (4) one $\frac{9}{32}$ rivet, (5) two $\frac{5}{16}$ rivets, (6) two type L brackets, (7) one free bimetal strip, (8) one heater bimetal strip, and (9) one aluminum or steel can or cover. The following sequential steps are utilized in producing a finished thermal relay circuit breaker:

1. Double drive riveting. Under this procedure the two #27 metal terminals and the two type L brackets are connected simultaneously to the plastic base by means of the two 5/16 rivets which are driven by a double drive riveting machine. The manual alignment of the machine and the components to be connected together before riveting is described as a four-step procedure. After riveting by the machine, ten out of each lot of 500 assemblies are subjected to quality inspection both visually and by means of a torque driver which determines whether the brackets are tight; if any of the ten samples is defective, all of the other assemblies in the lot are checked for defects.

2. Single drive riveting. This procedure involves the connection of the third terminal (the #34 heater terminal) to the base assembly created by the first step; the connection is effected by a single drive riveting machine utilizing the 9/32 rivet. The terminal and base assembly are positioned manually in essentially a two-step procedure prior to riveting by the machine, and after riveting the resulting assembly is inspected in the same manner as after the double drive riveting procedure.

3. Bimetal to base welding. A welding machine is used to attach the free bimetal strip to its proper bracket and the heater bimetal strip (*i.e.,* a bimetal strip around which is wound a heater wire which heats the bimetal strip so that it will deflect toward the free bimetal strip in order to close the circuit) to its proper bracket. The manual positioning of the components and the actual welding procedure are described as a seven-step operation. After welding, ten units are checked each hour for five possible defects; if any defects are found within the sample, the welder is adjusted or repaired and the entire lot is inspected for defects.

4. Heater wire welding. Under this procedure a welding machine is used to join the two leads of the heater wire to the rivets holding the terminals; this is described as a critical step since a good weld ensures proper operation of the unit. After a seven-step positioning and welding operation, samples are inspected as under step 3 above in order to check for weld strength, weld location, and wire insulation location.

5. Aging. This procedure involves the removal (burning off) of a binder (coating) which protects the glass insulation around the heater wire during handling: the procedure also serves to ensure a good weld (by causing the bimetal to deflect and thus break poor welds) and to simulate in excess of 100,000 cycles of operation. Two hundred units are inserted into a Burnoff holding board, heat is applied for from five to 15 minutes depending on customer specification, and heater wire lacquer is applied to both heater wire welds with a syringe. All units are then checked for proper burn off, some of which may require a second burn off or rewelding.

6. Calibration. A hand calibrating tool and a gram meter are used to adjust the closing time and reopening time to customer specifications: the calibrating tool varies the distance between the bimetal strips by slightly bending the free bimetal bracket in the case of a normally open unit or adjusts the contact pres-

sure between the bimetal strips in the case of a normally closed unit, and the gram meter measures the amount of force required to open or close a unit. The calibration sequence is described as a six-step operation and involves determination of the proper gram setting for each lot prior to actual calibration. Before and during the calibration of each lot, samples are tested to see if the units are being calibrated within the closing time limits.

7. Canning. This is the final assembly step and involves crimping the calibrated base assembly to a protective aluminum or steel can by means of a crimping machine. This canning operation is described as a four-step operation after which the complete unit is shaken to see if the can is loose and visually checked to see if the plastic base has cracks, chips or discoloration.

8. Testing. The terminals of the canned units are inserted into slots in a two-head, six-head, or eight-head test kit to determine the close time and reopen time of normally open units and the opening time of normally closed units in accordance with required customer specifications.

9. Decanning. If defects are found in the crimping or plastic base after canning, or if the unit does not meet the closing, reopening, or opening time limits, a machine is used to remove the crimped can from the base under a three-step procedure.

10. Inspection and packing. Eighty units out of a lot of 1000 units are tested for closing or opening times, the terminal cover strength is tested by applying 15 pounds of force along the longitudinal axis of each unit, the tightness of the terminals is checked by applying torque to each terminal, and each unit is visually checked for physical defects. The units are then packed in corrugated shipping cartons containing 1000 units each.

In addition to the above description of the manufacturing operation, your letter provided a constructed value statement concerning the costs incurred in connection with the production of the thermal relay circuit breakers. These costs consist of the following for each unit: (1) $.169550 attributable to United States materials, (2) $.103664 attributable to the value of Haitian labor, and (3) $.008476 attributable to other value. Based on these figures the total value for each unit is $.281690 of which 36.80 percent consists of value added in Haiti.

You state that all products manufactured by your firm in Haiti are imported directly into the Customs territory of the United States and are entered under item 685.90, Tariff Schedules of the United States (TSUS), with duty paid only on the value added in Haiti under the provisions of item 807.00, TSUS. You further point out that the portion of the value of materials produced in the United States which may be counted for purposes of the 35 percent value-content requirement under the CBI (in this case the full allowable 15 percent of the appraised value of the imported article since the value of the United States materials exceeds 15 percent of

that appraised value) together with the value added in Haiti exceed 50 percent of the total value of the finished article and thus easily meet the 35 percent value-content requirement. Finally, you are of the opinion that the assembly of the merchandise in question in Haiti involves extensive procedures involving many steps and thus results in a new or different article of commerce by means of a process which represents more than a "simple combining" operation within the meaning of section 213(a)(2)(A) of the CBI statute (19 U.S.C. 2703(a)(2)(A)). Accordingly, you believe that both the economic benefit derived by Haiti and the nature of the operations performed in Haiti cause the subject merchandise to fall within the spirit and intent of the CBI.

We would first like to point out that under the CBI statute duty-free treatment is contingent upon a finding both that the imported article is the growth, product, or manufacture of a CBI beneficiary country and that the 35 percent value-content requirement has been met; therefore, the mere fact that the underlying purpose behind the CBI statute appears to be met by adding value so as to comply with the 35 percent value-content requirement is not sufficient in itself to result in an article entitled to duty-free treatment under the CBI. This being said, we are in agreement with your view that the processing operations performed in Haiti represent more than a simple combining operation within the meaning of the CBI statute. In this regard, a review of the legislative history relating to the CBI reveals that the limitation on simple combining (*e.g.* assembly) operations was inserted to ensure that certain types of operations providing little economic benefit to the beneficiary country would not result in a product of that country; on the other hand, the legislative history clearly indicates that this limitation should not be applied to meaningful assembly operations. We believe that the specified assembly operation in the present case, which involves ten major steps and a larger number of smaller steps requiring significant manual manipulation, attention to detail, and quality control, is clearly a meaningful or sufficiently complex assembly operation so as to result in a product of a beneficiary country for purposes of the CBI.

As concerns the 35 percent value-content requirement, we believe that the value figures which you submitted demonstrate that this requirement would be met, provided that the stated cost of the completed thermal relay circuit breaker represents an acceptable basis for appraisement of the merchandise. You may wish to note in this regard that any costs for packing materials and transportation incurred in bringing the United States materials and components to the assembly plant in Haiti are to be included as part of the cost or value of the United States materials rather than as "other" costs as set forth on the constructed value statement submitted with your letter; however, this would not appear to affect the question of compliance with the 35 percent value requirement.

Based on the above, and since you indicate that the thermal relay circuit breakers would be imported directly from Haiti into the Customs territory of the United States, we are of the opinion that they would be entitled to duty-free treatment provided that there is compliance with the documentary requirements set forth in the CBI implementing regulations.

(C.S.D. 84-106)

This ruling holds that the mere joining of a component to itself does not constitute an assembly for purposes of item 807.00, TSUS. The material utilized to accomplish the joinder is not considered to be a fabricated component. Accordingly, when a piece of fabric is folded and sewn or otherwise fastened to itself, there is only a single component involved and, therefore, the joinder cannot be considered an assembly of two or more components.

Date: May 15, 1984
File CLA-2 CO:R:CV:VS
071418 TL

Your April 28, 1983, request for a ruling has been referred to this office for a direct reply. According to this request your client knits glove shells in the United States. A raw edge is created on the wrist end of the glove shell when the last row is knitted on it. This edge is sewn to stabilize it, to prevent it from unraveling. This stabilized glove shell and a vinyl palm, cut to size and shape are both sent abroad. Both the glove shell and palm were made in the United States. Once abroad, the top two inch portion of the wrist end of the glove shell is turned inside the glove shell and the edge is sewn to it. According to your letter the glove shell is also brushed, blocked, and inspected and the palm is sewn to it to form a glove. The glove is then inspected and imported into the United States.

In your letter, you request that item 807.00, Tariff Schedules of the United States (TSUS), treatment be accorded to the processes performed abroad to the glove shell and palm. In ruling 04159 dated October 29, 1975, a similar process was considered for item 807.00, TSUS, treatment and rejected. Item 807.00, TSUS, is a provision for:

> Articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting.

For convenience of discussion, the operations performed abroad are divided into two distinct operations: (1) the sewing of the palm

to glove shell and (2) the hemming of the wrist end of the glove shell to itself and the attendant operations thereto (the folding over of the glove shell, and brushing, blocking, inspection of it, and the reinspection of the glove).

Even a quick perusal leads us to the conclusion that the sewing of the palm to the glove shell qualifies for item 807.00, TSUS. It is the hemming of the wrist end of the glove shell to the glove shell itself that requires a closer examination.

To paraphrase item 807.00, TSUS, several conditions must be met in order for an article to qualify for item 807.00 treatment: (1) the articles must be assembled abroad of U.S. components; (2) the components must be exported ready for assembly without further fabrication; (3) the U.S. components must retain their physical identity; and (4) the U.S. components cannot be advanced in value except by assembly abroad and operations incidental thereto.

As to the first, the turning down of the edge of the glove shell, its attachment to the rest of the glove shell, and the operations which accompany it, present one question: Is this turning down and attachment of the edge of the glove shell to the glove shell an assembly of fabricated *components*?

In *United States* v. *Baylis Brothers Company,* 59 CCPA 9, C.A.D. 1026, 451 F. 2d 643 (1971), the Court of Customs and Patent Appeals stated that the gathering of material of a dress front by threading string through dots in the fabric and drawing (compressing) the fabric together qualified for item 807.00, TSUS, treatment. The thread and dress front were each a component assembled to form an article "assembled aboard in whole or in part of fabricated components."

However, according to administrative precedent, such as administative ruling 067278, dated May 21, 1981:

> We have consistently held that the mere joining of a component to itself does not constitute an assembly for 807.00, TSUS, puposes. The material utilized to accomplish the joinder . . . is not considered to be a fabricated component. Accordingly, . . . where a piece of fabric is folded and sewn or otherwise fastened to itself, there in only a single component involved and, therefore, the joinder cannot be considered an assembly of two or more components, as required by the statute.

Although the *Baylis Brothers* case, cited above, appears to conflict with the view just quoted, we believe that a clear distinction can be made. In *Baylis Brothers,* the court noted that by putting the thread through the stenciled holes and gathering the fabric, an elasticity is produced which allow the dress to contract or expand. In this circumstance, the thread acts as more than a simple binding agent and, therefore, is in itself a component joined to the dress. In the case of the glove shell, the thread is clearly a binding or joining agent and nothing more. Accordingly, we conclude that

the stitching of the cuff to the glove shell does not involve an assembly within the meaning of item 807.00, TSUS.

Further, the stitching of the cuff to the glove shell advances the value of the shell. Because the stitching of the cuff bears no relationship to the sewing of the palm to the shell, it cannot be considered incidental to that assembly. Accordingly, the glove shell will not qualify for item 807.00, TSUS, treatment. Only the value of the vinyl palm may be deducted from the appraised value for item 807.00, TSUS, purposes.

(C.S.D. 84-107)

This ruling holds that the currency translation loss involved in this case cannot be used for computed value purposes in view of the fact that the loss has no direct relationship to the assembly process and is used only to balance the general ledger when accounts are coverted from foreign currency to U.S. dollars (Section 402(e), TAA of 1979).

Date: May 15, 1984
File: CLA-2-CO:R:CV:VS
543276 MK

To: Deputy Assistant Regional Commissioner, Regulatory Audit, Pacific Region

From: Director, Classification and Value Division

Subject: Treatment of Foreign Currency Translation losses under Computed Value

Your memorandum of March 2, 1984, requests Internal Advice on the above subject with regard to valuation of semiconductor devices which (corporation name), imported from a related company in Mexico, (company) during October 1981 through March 1982.

You advise that in computing the operating profit for (company) for the six month period ended March 31, 1982, (corp.) deducted a loss on foreign currency translations in the amount of $334,000.00. Under the computed value method of appraisement utilized by (corp.), one of the key elements included in the computation of dutiable value is (conpany) net operating profit. Therefore, the loss on foreign currency translations which reduced net profit resulted in a reduction of total dutiable value.

Each month (company) submits to (corp.) a trial balance stated in pesos, (corp.) then prepares a currency translation worksheet where each trial balance account is converted to U.S. dollars on the following basis:

Fixed Assets and Liabilities—Historical exchange rate
Current Assets and Liabilities—End of the month exchange rate
Income and Expenses—Weighted average monthly exchange rate

(corp.) explained the impact of this monthly conversion as follows: ". . . since the translations of the (company) General Ledger

from pesos to U.S. dollars differ by account classification an amount is generated at Corporate to balance the (company) General Ledger in U.S. dollars."

In order to balance the general ledger, (corp.) established accounts in which they record gain or loss on foreign currency translations. As of March 31, 1982, the balance in the loss on foreign currency translations account was $334,000.

You state that the loss on foreign currency translations claimed by (corp.) has no direct relationship to the assembly process performed by (company). It does not result from operations and is used only to balance the general ledger when the accounts are converted from pesos to U.S. dollars. In fact, the loss relates only to balance sheet accounts since all income and expense accounts are translated using the weighted average monthly exchange rate.

The accounting treatment of this type of loss is covered by Financial Accounting Standards Board (FASB)—Statement No. 52, "Foreign Currency Translation." It is related therein, "Gain or loss on the translation of foreign currency financial statements is not recognized in current net income, but is reported as a separate component of stockholder's equity." Therefore, you contend that according to generally accepted accounting principles (GAAP), net profit for the period ended March 31, 1982 should not have been reduced by the amount of this extraordinary loss and total dutiable value is thus understated by $334,000.

In the alternative, should the loss on foreign currency translations be considered a current period cost rather than an extraordinary loss, you argue that the total dutiable value is still understated by $334,000. This understatement would result because the loss would have to be included with other current period costs in arriving at computed value under Section 402(e) of the Trade Agreement Act of 1979.

In conclusion, you state that under GAAP the currency translation loss should not have been used to decrease net income. However if (corp.) does consider the loss as a cost applicable to the current period it should be included with other dutiable costs in arriving at computed value.

Computed value, section 402(e)(1) of the Trade Agreement Act of 1979 includes:

> (B) an amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States.

Section 402(e)(2)(B) provides that:

> (B) the amount for profit and general expenses under paragraph (1)(B) shall be based upon producer's profits and expenses, unless the producer's profits and expenses are inconsistent with those usually reflected in sales of merchandise of

> the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States, in which case the amount under paragraph (1)(B) shall be based on the usual profit and general expenses of such producers in such sales, as determined from sufficient evidence.

In reviewing the facts you present, we conclude that (corp.) currency translation loss cannot be used for computed value purposes in view of your statement that:

> The loss on foreign currency translation . . . has no direct relationship to the assembly process performed by (company). It does not result from operations and is used only to balance the general ledger when the accounts are converted from pesos to U.S. dollars.

Under section 402(e), the amount for general expenses and profits (a single figure) is determined by information the producer supplies and his commercial accounts, provided such accounts are consistent with generally accepted accounting principles in the country of production.

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

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Decisions of the United States Court of International Trade

(Slip Op. 84-118)

United States Court of International Trade

AMERICAN CYANAMID COMPANY, PLAINTIFF, *v.* THE UNITED STATES, ET AL., DEFENDANTS

Court No. 84-6-00817

Before: DICARLO, *Judge.*

Memorandum Opinion and Order

Plaintiff seeks review of denial of its petition, pursuant to section 751(b) of the Tariff Act of 1930, to International Trade Commission (ITC) to revoke 1977 antidumping order regarding Japanese melamine in crystal form for 1978 only. Plaintiff moves to enjoin Customs Service from deciding protests regarding three 1978 entries subject to the 1977 order.

Held: Section 751(c) permits the ITC to revoke dumping determinations only with respect to unliquidated entries. As plaintiff's entries were liquidated in 1982, the ITC is unable to grant plaintiff relief. There is, therefore, no likelihood that plaintiff will succeed on the merits of its action in this Court, and plaintiff will not be irreparably injured by the denial of this injunction.

[Plaintiff's motion for preliminary injunction denied.]

(Decided October 22, 1984)

Donovan Leisure Newton & Irvine (Mark B. Feldman, John P. Dean, and *Ronald J. Cracas),* for the plaintiffs.

Richard K. Willard, Acting Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch *(Francis J. Sailer, A. David Lafer,* and *Brenda A. Jacobs),* for the defendants.

DICARLO, *Judge:* On September 4, 1984, plaintiff, American Cyanamid Company, moved for a temporary restraining order and for a preliminary injunction enjoining the Customs Service from deciding protest Nos. 28092-001030 and 1001-2-012057.

The temporary restraining order was granted and was extended by the Court to October 22, 1984. Oral argument on the motion for preliminary injunction was heard on September 17, 1984.

On December 20, 1976, the United States International Trade Commission (ITC) made an affirmative injury determination with respect to Japanese melamine in crystal form. 41 FR 56865. Subsequent to the ITC determination, an antidumping order was issued February 2, 1977, subjecting Japanese melamine in crystal form to an antidumping duty. T.D. 77-54, 42 FR 6866. Plaintiff made three entries of Japanese melamine in crystal form during August and September of 1978 (New York entries 500674 and 532254 and San Francisco entry 172402). The Department of Commerce reviewed the dumping finding on Japanese melamine in crystal form on March 5, 1981, and antidumping duties of $122,970.68 were subsequently assessed on these three entries.

The San Francisco entry was liquidated on May 14, 1982, and the New York entries on July 30, 1982. Each of the liquidations was timely protested.

On April 10, 1984, plaintiff petitioned the ITC, pursuant to section 751(b) of the Tariff Act of 1930, 19 U.S.C. § 1675(b) (1982), to review the injury finding for 1978 only. Plaintiff alleged that the inadequacy of domestic sources of melamine in crystal form in 1978 constituted "changed circumstances" requiring revocation of the finding for 1978, as imports in that year could not have injured the domestic industry. Plaintiff contended it would be contrary to the purpose of the antidumping laws to assess it for importing Japanese melamine in crystal form during 1978.

The ITC dismissed the petition on May 16, 1984 as improperly filed because it failed to request prospective relief. 49 Fed. Reg. 20765. On June 15, 1984, plaintiff filed this action to obtain judicial review of that determination. Plaintiff moved for a preliminary injunction after it was informed that Customs was about to deny its protests, thereby divesting Customs of jurisdiction over the entries.

Plaintiff alleges that if the protests are denied and it is compelled to pay antidumping duties, this Court would be without authority to order Customs to return the money if the Court finds the ITC erred in dismissing plaintiff's petition, and the ITC subsequently revokes its affirmative injury determination for 1978.

To prevail on its motion for a preliminary injunction, plaintiff must show (1) that it will be immediately and irreparably injured; (2) that there is a likelihood of success on the merits; (3) that the public interest would be better served by the relief requested; and (4) that the balance of hardship on all the parties favors the petitioner. *Zenith Radio Corp.* v. *United States,* 710 F.2d 806, 809 (Fed. Cir. 1983); *S.J. Stile Assoc. Ltd.* v. *Snyder,* 68 CCPA 27, 30 646 F.2d 522, 525 (1981).

Plaintiff brought its action in this Court under 28 U.S.C. §§ 1581(c) and (i) (1982) and section 516A of the Trade Agreements

Act of 1979, 19 U.S.C. § 1516a (1982), seeking review of the ITC's denial of its request, pursuant to section 751(b), to revoke the Treasury Department's 1977 antidumping order for 1978 only.

Section 751(b) allows the ITC to revoke dumping determinations where "changed circumstances" exist. Section 751(c) states that any revocation "shall apply with respect to *unliquidated entries* of merchandise" (emphasis added). Each of the entries in this case has been liquidated. Therefore, the ITC is unable to grant the relief requested in the plaintiff's section 751(b) action, and there is no likelihood of success on the merits of plaintiff's section 516A action in this Court.[1]

Plaintiff claims that it will be irreparably harmed if the protests are denied. The irreparable injury claimed by the plaintiff is that, if its protests are denied, it will be unable to take advantage of a favorable determination which may be received from the ITC. As section 751(c) forecloses favorable ITC action, no irreparable injury can result from denial of the protests.

Since there is neither likelihood of success nor irreparable injury, the public interest would be ill served by granting the injunction and there is nothing to weigh on plaintiff's side in balancing the equities. The motion for preliminary injunction is denied.

The Court expresses no opinion as to whether plaintiff could be afforded the relief it seeks in an action filed under 28 U.S.C. § 1581(a), and the law existing prior to the Trade Agreements Act of 1979, after the denial of its protests.

It is hereby ordered that plaintiff's motion for preliminary injunction is denied.

[1] Plaintiff's argument that the liquidations are not "final" because of the pending protests, confuses review under section 516A with review following denial of protests under sections 514 and 515 of the Tariff Act of 1930, 19 U.S.C. §§ 1514 and 1515 (1982). The ITC's refusal to act on a section 751(b) petition may only be challenged under section 516A. *See* H.R. Rep. 96-1235, 96th Cong., 2d Sess. 44, *reprinted in* 1980 U.S. Code Cong. & Ad. News. 3729, 3756. Section 751(c) speaks only of "unliquidated entries."

Where relief is sought in this Court under section 516A with respect to particular entries, liquidation must have been stayed pending the ITC review. *See Zenith Radio Corp.* v. *United States*, 710 F.2d 806, 810 (Fed. Cir. 1983); *Cermica Regiomontana, S.A. and Industrias Intercontinental, S.A.* v. *United States*, 7 CIT ——, Slip. Op. 84-77 (June 29, 1984).

Plaintiff's reliance on 28 U.S.C. § 2638, is similarly misplaced. Section 2638 allows the Court to consider "any new ground in support of the civil action" brought under section 515.

Index

U.S. Customs Service

Treasury Decisions

Customs Service Decisions

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